

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

DATE: October 26, 2005

TO : Joseph P. Norelli, Regional Director  
Region 20

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Target, Inc.  
Case 20-CA-32519

512-5036-6793  
512-5072-0100

This case was submitted for advice as to whether the Employer's rule prohibiting employee conduct that "disrupts business and/or negatively impacts guest service or teamwork" is unlawful under Lafayette Park Hotel, 326 NLRB 824 (1998).

We conclude that the Employer's rule of conduct is not unlawful as ambiguous or overly broad. First, the rule does not explicitly restrict Section 7 activity. Second, in light of Board precedent, we cannot conclude that employees would reasonably construe the rule to prohibit Section 7 activity. Third, there is insufficient evidence that the Employer promulgated the rule in response to Union activity. Finally, the single occurrence where the Employer applied the rule to restrict protected, concerted activity is insufficient to attack the rule as facially unlawful.

### **FACTS**

Target, Inc., a nationwide chain of retail stores based in Minneapolis, Minnesota, operates a distribution facility in Woodland, California. Beginning in June 2003, Charging Party Steven Bishop, a mechanic at the Woodland facility, began to assist an organizing campaign on behalf of an area Teamsters local.

In August 2003, Target, Inc. distributed an amended set of "Corrective Action Guidelines" applicable at all Target, Mervyn, and Marshall Field's facilities nationwide. Among other things, the amended Guidelines introduced a new rule (referred to as "Target Brand Behavior" or the TBB rule) sanctioning employees for certain conduct:

**14. Inability to Perform Duties in a Positive and Respectful Manner Consistent with Target Corporation Brand Expectations**

This includes, but is not limited to, conduct or behavior, regardless of overall performance, that disrupts business and/or negatively impacts guest service or teamwork.

The Respondent contends that this rule punishes disrespectful or inappropriate behavior.

On December 15, 2004, the Charging Party received a final warning and was subsequently discharged on May 6, 2005. The final warning cites six incidents: three TBB rule violations and three work quality issues. Of the three TBB violations, two addressed Bishop's rude behavior to coworkers. The other cited TBB violation concerned his behavior at an employee start-up meeting. At that meeting, an employee asked a supervisor whether safety monitors who observed whether employees were obeying posted traffic signs were taking employees' names. The supervisor assured employees that that was not the case. Bishop twice contradicted the supervisor in public, stating that he had been written up for violating this rule.

Bishop's discharge also cited six infractions, only one of which concerned a TBB rule violation. In this instance, the Employer contends that Bishop made inappropriate, joking remarks over an intercom system at the beginning of a fire drill.

The Region intends to issue a Section 8(a)(1) and (3) complaint alleging that the Employer issued Bishop a final warning and discharged him because of his protected organizing activities. In this context, the Region has concluded that Bishop was engaged in protected, concerted activity when he contradicted his supervisor at the start-up meeting, which resulted in a TBB rule violation cited in his final warning.<sup>1</sup>

The Employer has disciplined Woodland employees for at least 27 infractions of the TBB rule between August 2004 and July 2005. Most infractions involve behavior that is disrespectful to coworkers, customers or supervisors; failures to work cooperatively in a team environment; and negative responses to assignments of work. There is no contention or indication that the Employer punished

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<sup>1</sup> The Region has not sought Advice over these conclusions.

employees under the TBB rule for engaging in protected, concerted activity, with the exception of the incident involving the Charging Party described above.

### **ACTION**

For the following reasons, we conclude that the Employer's rule is not unlawful.

An employer violates Section 8(a)(1) by maintaining a work rule that "would reasonably tend to chill employees in the exercise of their Section 7 rights."<sup>2</sup> A work rule that explicitly prohibits employees from engaging in Section 7 activity is unlawful. If the rule does not explicitly prohibit Section 7 activity, the work rule is unlawful if (1) employees would reasonably construe the rule to prohibit Section 7 activity; (2) the employer promulgated the rule in response to Section 7 activity; or (3) the employer has applied the rule to restrict employees in the exercise of their Section 7 rights.<sup>3</sup>

In applying this framework, we conclude that the evidence is insufficient to establish a violation. First, the TBB rule does not explicitly refer to Section 7 rights. Second, in light of extant Board law, we cannot conclude that employees would reasonably construe the rule to prohibit the exercise of their Section 7 rights. In Lafayette Park, the Board concluded that Standard of Conduct 6 -- precluding employees from "being uncooperative" or engaging in conduct that does not "support" the employer's goals -- was not facially ambiguous, but rather served the employer's legitimate business concerns.<sup>4</sup> Similarly, in Flamingo Hilton-Laughlin, the Board affirmed the ALJ, who held that a rule requiring employees to maintain a "satisfactory attitude" was neither unlawfully overbroad nor ambiguous.<sup>5</sup> We conclude that the TBB rule here, prohibiting employees from engaging in conduct that "disrupts business and/or negatively impacts guest service or teamwork" is not distinguishable from language previously found lawful by the Board. Third, in light of the fact that Target, Inc. issued the rule in August 2003 to Target, Mervyn's and Marshall

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<sup>2</sup> Lafayette Park Hotel, 326 NLRB 824, 825 (1998), enfd. per curiam 203 F.3d 52 (D.C. Cir. 1999).

<sup>3</sup> Lutheran Heritage Village-Livonia, 343 NLRB No. 75, slip op. at 1-2 (November 19, 2004).

<sup>4</sup> 326 NLRB at 825-26.

<sup>5</sup> Flamingo Hilton-Laughlin, 330 NLRB 287, 294-95 (1999).

Field facilities nationwide, we cannot conclude that the Employer promulgated the rule in response to Section 7 activity at the Woodland facility. Finally, although the Employer disciplined the Charging Party under the TBB rule on one occasion for his protected, concerted conduct at a start-up meeting, we cannot conclude that the totality of experience with the rule establishes that the Employer applies the rule generally to restrict Section 7 activity.

Accordingly, the Region should not include in any outstanding complaint an allegation that the Employer's TBB rule is facially unlawful.

B.J.K.